

Sec. 7. The powers granted under this Act shall be in addition to and not in derogation of any and all existing powers of each conservation and reclamation district subject to the provisions of this Act, and this Act shall not be deemed to repeal, expressly or by implication, any power or right otherwise granted to any such district.

Sec. 8. The fact that the conservation and reclamation districts whose boundaries include a large part of the territory drained by any single river system are entities ideally suited for the provision of centralized sewage facilities and that, in numerous cases, pollution of rivers and streams may result from the failure to provide adequate facilities for sewage disposal; and the fact that increasing population and population density has resulted in a need for increased and enlarged sewage facilities and that, in many cases, individual communities are unable to provide such facilities, either for financial reasons or because, from an engineering standpoint, centralized facilities are required; and the fact that immediate action is essential to the proper fulfillment of the foregoing needs and the welfare of the state, create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read in each House on three succeeding days be suspended, and said Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 20, 1965: Yeas 31, Nays 0; Senate concurred in House amendments on May 24, 1965, by a viva voce vote; passed the House on May 21, 1965, with amendments: Yeas 147, Nays 1.

Approved May 27, 1965.

Effective Aug. 30, 1965, 90 days after date of adjournment.

UNDERGROUND WATERS—POLLUTION—PREVENTION

CHAPTER 264¹²

H. B. No. 77

An Act designed to aid in the prevention of pollution of the State's underground water by providing minimum water well driller qualifications and standards of conduct to be administered by the herein created Texas Water Well Drillers Board; Board rules, examinations, and hearings; duties of Texas Water Commission hereunder; penal provisions for violation and provisions for enforcement, jurisdiction, and venue; repealing Chapter 458, Acts of the 57th Legislature, Regular Session, 1961; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Short title

Section 1. This Act shall be known and may be cited as "The Water Well Drillers Act."

Definitions

Sec. 2. The following words and phrases as used in this Act shall have the following meanings unless a different meaning clearly appears from

¹² Vernon's Ann.Civ.St. art. 7621e, §§ 1-20.

the context. The singular form shall also mean plural form and the masculine gender shall also include the feminine and neuter genders.

(a) "Person" shall mean any individual, whether or not connected with a firm, partnership, association, corporation, or any other group or combination acting as a unit.

(b) "Commission" shall mean the Texas Water Commission or its successor.

(c) "Board" shall mean the Texas Water Well Drillers Board.

(d) "Water well" shall mean any artificial excavation constructed for the purpose of producing ground water. The term, however, shall not include any test or blast holes in quarries or mines, or any well or excavation for the purpose of exploring for, or producing oil, gas, or any other minerals.

(e) "Water well driller" shall mean any person (including owner, operator, and drilling supervisor) who engages for compensation in the drilling, boring, coring, or construction of any water well in this State. The term, however, shall not include any person who drills, bores, cores, or constructs a water well on his own property for his own use or a person who assists in the construction of a water well under the direct supervision of a registered water well driller and is not primarily responsible for the drilling operations.

(f) "Registered water well driller" shall mean any person who holds a certificate issued by the State of Texas pursuant to the provisions of this Act.

(g) "Pollution" shall mean an impairment of the physical, chemical, or biological properties of water by the acts or instrumentalities of man to a degree which results in a material and adverse effect upon the quality as to destroy possible consumptive or beneficial use of such waters.

(h) "Well log" shall mean a log accurately kept, at the time of drilling, showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size and character of casing installed, together with any other data or information required by the Board, on forms prescribed by the Board.

(i) "Water Well Drillers Board" shall mean an examining board consisting of nine (9) members, three of whom shall be ex officio nonvoting members and six of whom shall be voting members appointed by the Governor with the advice and consent of the Senate as hereinafter provided.

(j) "Registration fee" shall mean the initial fee to be paid by a driller under this Act which shall be, unless otherwise provided herein, \$25.00.

(k) "Renewal fee" shall mean that fee paid by a previously registered driller which shall be \$25.00 per annum.

(l) "Examination fee" shall mean that \$10.00 non-refundable fee required of each applicant for each examination.

Registration required

Sec. 3. (a) It shall be unlawful for any person to act as or to offer to perform services as a water well driller without first obtaining a certificate of registration in the manner prescribed herein and pursuant to the rules of Water Well Drillers Board.

(b) Applications shall contain the name of the applicant, his business address, his permanent mailing address, and such other relevant information as the Board may require.

(c) At the time of making application, each applicant shall pay to the Commission the required examination fee which shall be non-refundable; and the successful candidates upon notification of eligibility shall pay to the Commission the registration fee.

(d) All certificates of registration issued under this Act shall expire on August 31 of each year; and on or before that day, each person holding a certificate of registration shall pay to the Commission the sum of \$25.00 as an annual renewal fee. Provided further, however, any driller who allows his license to lapse shall be given a one-year grace period in which to renew his certificate by paying the accrued renewal fee, without the need of taking the drillers examination.

(e) A certificate of registration shall not be transferable or assignable.

(f) A duplicate certificate of registration to replace a lost or destroyed certificate shall be issued by the Commission upon proper application and payment of a \$1.00 fee.

(g) Any water well driller in this State on the effective date of this Act shall be entitled to a certificate of registration upon the filing of an application no later than August 31, 1966, and the payment of a \$25.00 registration or renewal fee.

(h) Each applicant shall have been a resident of the State of Texas for not less than 90 days prior to making application for registration as a water well driller.

Reciprocity

Sec. 4. The Commission, upon application therefor and upon the payment of the proper registration fee, may issue a certificate of registration as a registered water well driller to any person who holds a certificate of qualification or registration issued to him by proper authority in any state or territory or possession of the United States, or of any other country, if the registration standard under which said certificate was issued is of a standard not lower than that specified by the provisions of this Act, and the rules of the Water Well Drillers Board promulgated pursuant to the provisions hereof, and if that particular state, territory, or possession of the United States, or country extends similar privileges to the persons registered under the provisions of this Act; provided, however, that before such applicant may be registered, he must show compliance with the residency requirements of Section 3, subsection (h) hereof. The Board shall keep the Commission informed of what states, territories, possessions, and countries fulfill these reciprocal requirements.

Reporting of well logs

Sec. 5. Every registered water well driller drilling, deepening or otherwise altering a water well within this State shall make and keep, or cause to be made and kept, a legible and accurate well log, and within sixty (60) days from the completion or cessation of drilling, deepening or otherwise altering such a water well, shall deliver or transmit by certified mail a copy of such well log to the Commission, and the owner thereof or the person having had such well drilled. The well log required herein shall at the request in writing to the Commission, by certified mail, by the owner or the person having such well drilled be held as confidential matter and not made of public record.

Water well drillers board

Sec. 6. The Water Well Drillers Board shall be composed of nine (9) members, three ex officio and six appointed as follows, to wit:

(a) One (1) member of the Board shall be the chairman of the Texas Water Commission or a representative from his staff appointed by him who shall be a nonvoting member and shall serve in an advisory capacity only. In the event that the functions of the Texas Water Commission are trans-

ferred to the Texas Water Development Board, then the member appointed hereby shall be the Executive Director of the Texas Water Development Board or a representative from his staff appointed by him.

(b) One (1) member shall be the Executive Secretary of the State Water Pollution Control Board or a representative from his staff appointed by him and shall also be a nonvoting member and shall serve in advisory capacity only.

(c) One (1) member shall be the chairman of the State Board of Health or a representative from his staff appointed by him and shall also be a nonvoting member and shall serve in an advisory capacity only.

(d) Six (6) members shall be water well drillers appointed by the Governor with the advice and consent of the Senate, under the following conditions, to wit:

(1) Each such driller shall be a citizen of the State of Texas.

(2) Each such driller shall have a minimum of ten years' experience in the water well drilling business prior to his appointment.

(3) Each such driller shall be conversant in water well drilling, completion and plugging methods and techniques.

(4) Each such driller shall be a registered water well driller.

(5) One driller shall be selected from the State at large and one of each such drillers shall be selected from the following geographic areas of the State of Texas:

A. Gulf Coast Area.

B. Trans-Pecos Area.

C. Central Texas Area.

D. North-East Texas Area.

E. Panhandle-South Plains Area.

(e) It is further provided that no more than one (1) Board member may be employed by or own an interest in the same company, firm or business association which is engaged in any phase of the water well drilling business.

(f) The first six (6) Board members shall be appointed for the following terms: two (2) for two (2) years; two (2) for four (4) years; and two (2) for six (6) years.

(g) All terms shall expire on September 15 and all regular appointments shall be for terms of six (6) years.

(h) The initial appointments of the six (6) members shall be made immediately following the effective date of this Act.

(i) The six (6) appointed Board members shall receive compensation and travel allowance as the Legislature may provide in the General Appropriation Act.

(j) The Board shall hold a regular annual meeting; it may hold special meetings at the call of the chairman or at the request of three Board members.

(k) A majority of the Board is a quorum for conducting business.

(l) The Board shall elect a chairman, who shall be presiding officer, and who shall not vote except when there shall be a tie vote, by a majority vote at the first regular meeting each year.

(m) The Board shall prepare and grade examinations and pass upon qualifications of applicants for licenses and cause to be issued licenses to those who qualify.

(n) The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques and of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water.

Provided, however, that each applicant shall have the right to have such examination given him orally, in lieu of in writing.

(o) A person who passes the examination given by the Board is entitled to be licensed under this Act.

(p) Administration of examination:

(1) The Commission shall offer examinations prepared by the Board at least once a year and more frequently if more than 10 persons petition the Commission for an additional examination, or the Board should so provide.

(2) The examination shall be so administered so that the one who grades an examination does not know whose paper he is grading.

(3) The Commission shall maintain files of examination papers. A person, at any time within six months of the date that he is notified of the results of an examination, is entitled to inspect his examination paper during normal business hours at the Commission's office for the purpose of challenging the propriety of the questions, the method of grading, and the accuracy of grading.

(4) All successful applicants who pass the examination may pay the \$25.00 registration fee to the Commission and obtain a drillers registration certificate.

(q) The person who fails an examination may apply for a subsequent examination, but must pay the application fee each time he applies. He may not, however, be counted among the ten (10) applicants necessary to petition for an additional examination.

Rules and regulations

Sec. 7. (a) The Water Well Drillers Board shall constitute an Examining Board which shall certify applicants eligible for registration to the Commission and, under certain conditions set out below, suspend or revoke the license of a registered water well driller. The Board shall promulgate and adopt procedural rules describing how a person applies for and takes an examination under this Act and the procedure to be followed in public hearings pursuant to the provisions of this Act. It shall also promulgate and adopt substantive rules defining standards of conduct governing registered water well drillers. The Board shall promulgate regulations necessary to implement the vehicle and equipment marking requirements of Section 14 of this Act. Be it further provided, however, that before the Board may adopt any substantive rule under this Act, it must mail a copy of the proposed rule or amendment together with an informative summary of the rule or amendment to each person licensed under this Act at least twenty (20) days prior to the proposed effective date of such a proposed rule. The procedural rules adopted by the Board shall be filed with the Secretary of State and shall become effective thirty (30) days thereafter.

(b) Full authority is given the Board to enforce by injunction or other appropriate remedy, in courts of competent jurisdiction, any and all reasonable rules, regulations, decisions, determinations and orders promulgated by it which do not conflict with any law. It shall be the duty of the Attorney General to represent the Board when requested to do so.

(c) All rules and regulations proposed to be adopted and promulgated by the Board shall be approved in writing by the Attorney General and placed on file in the office of the Secretary of State for public inspection for at least thirty (30) days prior to their effective date. Any changes, alterations or revocations of such rules and regulations shall be likewise approved in writing by the Attorney General and which changes, alterations or revocations shall be filed in the office of Secretary of State prior to their effective date.

Revocation of certificates of registration

Sec. 8. (a) The certificate of registration of any registered water well driller who violates any provision of this Act or any substantive rule or regulation of the Board promulgated under the authority of this Act may be revoked or suspended by the Board. Grounds for revocation or suspension of a driller's certificate shall include intentional misstatement or misrepresentation of fact on an application or well log; failure to keep and transmit water well logs as provided herein; failure to advise a person for whom a well is being drilled that injurious water has been encountered, is a pollution hazard, and must be forthwith plugged in an acceptable manner; or being found to be an incompetent water well driller.

(b) The Board shall, before suspending or revoking any certificate of registration, notify the holder in writing of any changes made in order to afford such holder an opportunity to be heard, which notification shall be given at least ten (10) days prior to the date set for hearing, and which shall prescribe the time and place of the hearing. Such written notice may be served by mailing same by registered mail to the last known business address of such person. At such hearing such person and all persons complaining against him, as well as any other witness whose testimony is relied upon to substantiate the charges made, shall be entitled to be present. He shall also be entitled to present evidence, oral and written as may be relevant to the inquiry. In such hearing all witnesses shall be duly sworn and a record of the proceedings shall be taken. Any party to the proceedings desiring it shall be furnished with a copy of the record upon the payment to the Board of a fee not to exceed fifty cents (50¢) per page.

(c) Every decision and order in a revocation or suspension hearing rendered by the Board shall be in writing and shall set forth briefly the findings of fact and Board's conclusions. Parties to the proceedings shall be notified of the decision or order in person or by mail and forwarded a copy of same; such orders or decisions shall be transmitted no later than thirty (30) days of conclusion of the hearing.

Appeal

Sec. 9. In all appeals prosecuted in any of the courts of this State pursuant to the provisions of this Act, such trials shall be de novo as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstances shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. The Legislature hereby specifically declares that the provisions of this Section shall not be severable from the balance of this Act, and further specifically declares that this Act would not have been passed without the inclusion of this Section. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any

way, such holding shall apply to this entire Act, and in such event this entire Act shall be null, void and of no force and effect. Venue of all appeals shall be in the county of the residence of the aggrieved person who files the appeal.

Duties of the commission

Sec. 10. (a) The Commission shall furnish the Board with necessary administrative services, including space for holding examinations; proctoring examinations; printing examinations; printing and mailing licenses; sending notices, before August 1 of each year that license must be renewed; collecting fees and issuing receipts; keeping a current register of licensees; employing secretarial assistance; replying to routine requests for information; printing forms and information; typing all letters to be reproduced; maintaining records and completed examinations; and keeping records of receipts and disbursements; providing necessary legal services; and providing necessary investigative services, and the Commission shall promulgate procedures and standards for plugging wells under Section 15 of this Act.

(b) The Board shall have access to information kept by the Commission under this Act.

(c) The Commission shall adopt the necessary procedural rules in order to carry out the imposed duties under this Section of this Act.

(d) Full authority is given the Commission to enforce by injunction or other appropriate remedy, in courts of competent jurisdiction, any and all rules, regulations, decisions, determinations and orders promulgated by it which do not conflict with any law.

Exception of drought disaster areas

Sec. 11. Upon petition of the commissioners court of any county the Governor may proclaim the county a drought disaster area. If the Governor issues the proclamation that the county is a drought disaster area, the terms and provisions of this Act are suspended in such a county for the length of time specified in the proclamation, except insofar as said Act applies to the plugging of water wells.

Disposition of revenues

Sec. 12. All money collected by the Commission under the provisions of this Act shall be placed in the General Revenue Fund.

Penal provisions

Sec. 13. (a) Any person not holding a certificate of registration as a registered water well driller who drills, bores, cores or constructs any water well in this State for compensation shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than \$25.00 nor more than \$200.00 or to punishment by confinement in jail for a period of not to exceed 120 days or by both such fine and jail confinement for first conviction; and may be punished for each subsequent conviction by fine of not less than \$200.00 or more than \$1,000.00 or by confinement in jail for not less than 120 days or more than one year or both by such fine and jail confinement.

(b) Any person who is a registered water well driller under this Act who fails to mark his equipment as provided herein is guilty of a misdemeanor and may be fined not less than \$25.00 nor more than \$200.00.

(c) Any person who wilfully violates any of the duties imposed by Section 15 of this Act by failing to give timely notice to the landowner or

person having a well drilled that a well must be plugged, or anyone who fails to plug such a well properly as soon as is reasonably possible, or anyone who fails to submit the required plugging report to the Commission within thirty (30) days is guilty of a misdemeanor and may be fined not less than \$200.00 or more than \$500.00.

(d) Any violator of these provisions may be arrested by any sheriff, constable or other lawful peace officer of this State or any political subdivision thereof. Such violations shall be tried in the county court of the county in which such offense occurred.

Marking of vehicles and equipment

Sec. 14. It is the duty of all registered water well drillers to see that all vehicles, trailers, and rigs used by them or their employees in the water well drilling business are marked with legible identification numbers at all times; the "identification number" to be used on vehicles and equipment shall be the "license number" which appears on the drillers registration certificate; the Board shall set out in detail in its rules the specific method and manner for marking said vehicles and equipment. The driller shall furnish a sworn statement that he has complied with this provision of the Act with his annual renewal fee each year. Any licensed driller has one hundred eighty (180) days to comply with the regulations provided in Section 14.

Plugging of wells

Sec. 15. (a) It shall be the duty of each driller registered under this Act to inform forthwith the landowner or person having a well drilled when water is injurious to vegetation, to land or to fresh water has been encountered and such well must be plugged in order to avoid injury or pollution.

(b) It shall be the duty of the landowner or person having a well drilled, upon being so informed, to see that such a well is forthwith plugged under standards set by the Texas Water Commission.

(c) It shall be the duty of whoever shall plug such a well to complete a plugging report within thirty (30) days and submit it to the Commission; appropriate forms shall be furnished by the Commission upon request.

Bond required

Sec. 16. After September 1, 1965, immediately upon approval of his application, the applicant shall be notified and before a registration certificate shall be issued, a bond executed by the applicant, as principal, and a surety company authorized to do business in this State as surety, shall be furnished the Commission in the principal sum of \$2,000.00 for the use and benefit of any injured party and conditioned that the applicant will pay any judgment recovered by any person in any suit for damages or injury caused by a violation of this Act. Every registered water well driller shall in like manner furnish and maintain such a bond on or before September 1, 1965, as a condition to the continued validity of his registration certificate.

Construction

Sec. 17. Nothing in this Act shall be construed as affecting the ownership, or the rights of owners of the land, in underground water.

Severability clause

Sec. 18. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without defeating the purpose or objective of the provision, and to this end, the provisions of this Act are declared to be severable.

Repealer clause

Sec. 19. Chapter 458, Acts of the 57th Legislature, Regular Session, 1961 (Article 7621c, Vernon's Texas Civil Statutes), is repealed;¹³ otherwise, this Act shall be cumulative of all laws or parts of laws relating to this subject.

Transfer of functions

Sec. 20. In the event that the functions of the Texas Water Commission necessary to the proper implementation of its duties under this Act are transferred to the Texas Water Development Board or any other agency, the authority given herein to the Texas Water Commission shall be transferred to the Texas Water Development Board or such other agency.

Emergency clause

Sec. 21. The importance of this legislation and the crowded condition of the Calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended.

Passed by the House on March 18, 1965: Yeas 97, Nays 36; House concurred in Senate amendments on May 11, 1965, by a non-record vote; passed by the Senate, as amended, on May 5, 1965, by a viva voce vote.

Approved May 27, 1965.

Effective Aug. 30, 1965, 90 days after date of adjournment.

13. Vernon's Ann.Civ.St. art. 7621c.